

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|---------------------------------------|---|----------------------|
| MAGTEN ASSET MANAGEMENT CORP. and |) | |
| LAW DEBENTURE TRUST COMPANY OF |) | |
| NEW YORK, |) | |
| |) | C.A. No. 04-1494-JJF |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| NORTHWESTERN CORPORATION, |) | |
| |) | |
| Defendants. |) | |
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| MAGTEN ASSET MANAGEMENT |) | |
| CORPORATION, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 05-499-JJF |
| |) | |
| v. |) | |
| |) | |
| MICHAEL J. HANSON and ERNIE J. KINDT, |) | |
| |) | |
| Defendants. |) | |
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**DEFENDANTS MICHAEL J. HANSON AND
ERNIE J. KINDT'S MOTION FOR SUMMARY JUDGMENT**

Defendants, Michael J. Hanson and Ernie J. Kindt, through their counsel of record, hereby move this Court pursuant to Fed. R. Civ. P. 56 for summary judgment in the above-entitled action. In support of their Motion, the Defendants state:

1. This action was commenced more than three years ago by Plaintiff, Magten Asset Management Corporation ("Magten") against the Defendants here. Magten alleges that Defendants, as officers of Clark Fork and Blackfoot, LLC ("Clark Fork"), a Montana limited liability company, which is wholly owned by NorthWestern Corporation ("NorthWestern"), breached a fiduciary duty allegedly owed to creditors of Clark Fork in connection with the decision made by NorthWestern Corporation ("NorthWestern"), as the sole Member-Manager of

Clark Fork, to transfer substantially all of the assets and liabilities from Clark Fork to it (the "Transaction").

2. After more than three years of litigation involving lay and expert witness depositions and the production of literally hundreds of thousands of documents, Defendants are entitled to summary judgment on one or more of the following grounds:

a. Magten lacks standing to bring an action against officers of Clark Fork for the value of certain unsecured, subordinated and junior debts ("QUIPS") since its claim is derivative in nature and well-established law precludes creditors from bringing a derivative action against the company.

b. The uncontested material facts do not give Magten a cause of action for which relief may be granted since: (1) there is no evidence that either Defendant knew or should have known that NorthWestern was unable to meet the obligations which it assumed upon the Transaction; and, in fact, NorthWestern did meet those obligations and no event of default occurred until ten months after the Transaction was completed; (2) there is no evidence that NorthWestern was insolvent or in the zone of insolvency either before or after the Transaction; (3) there is no evidence that Clark Fork was insolvent after the Transaction.

c. Magten began purchasing QUIPS only after the Transaction had been completed and only after NorthWestern announced that it might not be able to continue to pay on the QUIPS. Further, Magten continued to purchase QUIPS after NorthWestern actually suspended any payments on the QUIPS as permitted by the Indenture, and continued to purchase QUIPS even after NorthWestern filed a petition in bankruptcy, which was an event of default under the Indenture. As a matter of law, the Plaintiff is not entitled to recover compensatory damages greater than its out-of-pocket costs when it acquired QUIPS in order to increase, rather than mitigate, its damages and to buy itself a strike suit.

d. There is no evidence that the Defendants acted in a fraudulent or malicious manner and thus as a matter of law Magten is not entitled to punitive damages.

e. As a matter of law, the Plaintiff is not entitled to recover its fees or costs.

3. There are no material facts in dispute which preclude the granting of summary judgment in favor of the Defendants.

For the foregoing reasons and the reasons more fully set forth in Defendants' Brief in Support of their Motion for Summary Judgment, the accompanying Statement of Undisputed Facts, and in the accompanying Affidavits of Kimberly A. Beatty, Michael J. Hanson, Ernest J. Kindt, and Stephen Scherf, the Defendants respectfully request that Summary Judgment be granted in their favor.

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November 30, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 30, 2007, the attached **DEFENDANTS MICHAEL J. HANSON AND ERNIE J. KINDT'S MOTION FOR SUMMARY JUDGMENT** was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following counsel of record:

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